



House of Representatives

General Assembly

File No. 611

February Session, 2016

Substitute House Bill No. 5597

House of Representatives, April 14, 2016

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROTECTING DOMESTIC VIOLENCE VICTIMS SEEKING RESTRAINING ORDERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 46b-15 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2016*):

4 (b) The application form shall allow the applicant, at the applicant's
5 option, to indicate whether the respondent holds a permit to carry a
6 pistol or revolver, an eligibility certificate for a pistol or revolver, a
7 long gun eligibility certificate or an ammunition certificate or possesses
8 one or more firearms or ammunition. The application form shall also
9 allow the applicant, at the applicant's option, to state whether or not he
10 or she has probable cause to believe that the respondent poses a risk of
11 imminent personal injury to the applicant, in which case, the court
12 shall notify the office of the state's attorney for the judicial district in
13 which the application was filed to commence proceedings pursuant to
14 section 29-38c, as amended by this act. The application shall be

15 accompanied by an affidavit made under oath which includes a brief
16 statement of the conditions from which relief is sought. Upon receipt
17 of the application the court shall order that a hearing on the
18 application be held not later than fourteen days from the date of the
19 order. The court, in its discretion, may make such orders as it deems
20 appropriate for the protection of the applicant and such dependent
21 children or other persons as the court sees fit. In making such orders,
22 the court, in its discretion, may consider relevant court records if the
23 records are available to the public from a clerk of the Superior Court or
24 on the Judicial Branch's Internet web site. Such orders may include
25 temporary child custody or visitation rights, and such relief may
26 include, but is not limited to, an order enjoining the respondent from
27 (1) imposing any restraint upon the person or liberty of the applicant;
28 (2) threatening, harassing, assaulting, molesting, sexually assaulting or
29 attacking the applicant; or (3) entering the family dwelling or the
30 dwelling of the applicant. Such order may include provisions
31 necessary to protect any animal owned or kept by the applicant
32 including, but not limited to, an order enjoining the respondent from
33 injuring or threatening to injure such animal. If an applicant alleges an
34 immediate and present physical danger to the applicant, the court may
35 issue an ex parte order granting such relief as it deems appropriate. If a
36 postponement of a hearing on the application is requested by either
37 party and granted, the ex parte order shall not be continued except
38 upon agreement of the parties or by order of the court for good cause
39 shown. If a hearing on the application is scheduled or an ex parte order
40 is granted and the court is closed on the scheduled hearing date, the
41 hearing shall be held on the next day the court is open and any such ex
42 parte order shall remain in effect until the date of such hearing.

43 Sec. 2. Section 29-38c of the general statutes is repealed and the
44 following is substituted in lieu thereof (*Effective October 1, 2016*):

45 (a) Upon complaint on oath by any state's attorney or assistant
46 state's attorney or by any two police officers, to any judge of the
47 Superior Court, that such state's attorney or police officers have
48 probable cause to believe that (1) a person poses a risk of imminent

49 personal injury to himself or herself or to other individuals, (2) such
50 person possesses one or more firearms, and (3) such firearm or
51 firearms are within or upon any place, thing or person, such judge may
52 issue a warrant commanding a proper officer to enter into or upon
53 such place or thing, search the same or the person and take into such
54 officer's custody any and all firearms and ammunition. Such state's
55 attorney or police officers shall not make such complaint unless such
56 state's attorney or police officers have conducted an independent
57 investigation and have determined that such probable cause exists and
58 that there is no reasonable alternative available to prevent such person
59 from causing imminent personal injury to himself or herself or to
60 others with such firearm.

61 (b) A warrant may issue only on affidavit sworn to by the
62 complainant or complainants before the judge and establishing the
63 grounds for issuing the warrant, which affidavit shall be part of the
64 seizure file. In determining whether grounds for the application exist
65 or whether there is probable cause to believe they exist, the judge shall
66 consider: (1) Recent threats or acts of violence by such person directed
67 toward other persons; (2) recent threats or acts of violence by such
68 person directed toward himself or herself; and (3) recent acts of cruelty
69 to animals as provided in subsection (b) of section 53-247 by such
70 person. In evaluating whether such recent threats or acts of violence
71 constitute probable cause to believe that such person poses a risk of
72 imminent personal injury to himself or herself or to others, the judge
73 may consider other factors including, but not limited to (A) the
74 reckless use, display or brandishing of a firearm by such person, (B) a
75 history of the use, attempted use or threatened use of physical force by
76 such person against other persons, (C) prior involuntary confinement
77 of such person in a hospital for persons with psychiatric disabilities,
78 and (D) the illegal use of controlled substances or abuse of alcohol by
79 such person. If the judge is satisfied that the grounds for the
80 application exist or that there is probable cause to believe that they
81 exist, such judge shall issue a warrant naming or describing the
82 person, place or thing to be searched. The warrant shall be directed to
83 any police officer of a regularly organized police department or any

84 state police officer. It shall state the grounds or probable cause for its
85 issuance and it shall command the officer to search within a reasonable
86 time the person, place or thing named for any and all firearms and
87 ammunition. A copy of the warrant shall be given to the person named
88 therein together with a notice informing the person that such person
89 has the right to a hearing under this section and the right to be
90 represented by counsel at such hearing.

91 (c) The applicant for the warrant shall file a copy of the application
92 for the warrant and all affidavits upon which the warrant is based with
93 the clerk of the court for the geographical area within which the search
94 will be conducted no later than the next business day following the
95 execution of the warrant. Prior to the execution and return of the
96 warrant, the clerk of the court shall not disclose any information
97 pertaining to the application for the warrant or any affidavits upon
98 which the warrant is based. The warrant shall be executed and
99 returned with reasonable promptness consistent with due process of
100 law and shall be accompanied by a written inventory of all firearms
101 and ammunition seized.

102 (d) Not later than fourteen days after the execution of a warrant
103 under this section, the court for the geographical area where the
104 person named in the warrant resides shall hold a hearing to determine
105 whether the firearm or firearms and any ammunition seized should be
106 returned to the person named in the warrant or should continue to be
107 held by the state. At such hearing the state shall have the burden of
108 proving all material facts by clear and convincing evidence. If, after
109 such hearing, the court finds by clear and convincing evidence that the
110 person poses a risk of imminent personal injury to himself or herself or
111 to other individuals, the court may order that the firearm or firearms
112 and any ammunition seized pursuant to the warrant issued under
113 subsection (a) of this section continue to be held by the state for a
114 period not to exceed one year, otherwise the court shall order the
115 firearm or firearms and any ammunition seized to be returned to the
116 person named in the warrant. If the court finds that the person poses a
117 risk of imminent personal injury to himself or herself or to other

118 individuals, the court shall give notice to the Department of Mental
 119 Health and Addiction Services which may take such action pursuant to
 120 chapter 319i as it deems appropriate.

121 (e) Any person whose firearm or firearms and ammunition have
 122 been ordered seized pursuant to subsection (d) of this section, or such
 123 person's legal representative, may transfer such firearm or firearms
 124 and ammunition in accordance with the provisions of section 29-33 or
 125 other applicable state or federal law, to any person eligible to possess
 126 such firearm or firearms and ammunition. Upon notification in writing
 127 by such person, or such person's legal representative, and the
 128 transferee, the head of the state agency holding such seized firearm or
 129 firearms and ammunition shall within ten days deliver such firearm or
 130 firearms and ammunition to the transferee.

131 (f) An action under this section shall not preclude any person from
 132 seeking any other civil or criminal relief against the person named in
 133 the warrant.

134 [(f)] (g) For the purposes of this section, "ammunition" means a
 135 loaded cartridge, consisting of a primed case, propellant or projectile,
 136 designed for use in any firearm.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	46b-15(b)
Sec. 2	October 1, 2016	29-38c

Statement of Legislative Commissioners:

In Section 1(b), "a family or household member" was changed to "the respondent" for accuracy and consistency.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill amends the process for a risk warrant proceeding and does not result in a fiscal impact to the state or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 5597*****AN ACT PROTECTING DOMESTIC VIOLENCE VICTIMS SEEKING RESTRAINING ORDERS.*****SUMMARY:**

This bill makes changes to laws that relate to the service of civil restraining orders and risk warrants (see BACKGROUND).

Under existing law, a civil restraining order application form must allow an applicant, at his or her option, to indicate whether the respondent (accused) holds a gun permit or possesses firearms or ammunition. The bill revises the form in two ways.

First, it allows the applicant to also state whether the accused has a firearm eligibility or ammunition certificate.

Second, it allows the applicant to state whether he or she has probable cause to believe that the accused poses a risk of imminent personal injury to the applicant. If so indicated, the bill requires the court to notify the office of the state's attorney for the judicial district in which the application was filed to begin a risk warrant proceeding. The bill requires the state's attorney to follow existing law's procedures for obtaining a risk warrant (see BACKGROUND).

By law, a risk warrant commands a police officer to, within a reasonable time, search a specific person, place, or thing and take into custody any and all firearms and ammunition found during the search. The bill specifies that an action under the risk warrant statute does not preclude anyone from seeking other civil or criminal relief against the person named in the warrant.

EFFECTIVE DATE: October 1, 2016

BACKGROUND***Civil Restraining Order***

An individual may apply for a civil restraining order for relief from physical abuse, stalking, or a pattern of threatening from his or her family or household member (CGS § 46b-15).

Risk Warrants

Factors a Judge Must Consider. By law, in determining whether grounds for a risk warrant exist or whether there is probable cause to believe they exist, the judge must consider recent (1) threats or acts of violence by the person directed toward him- or herself or others and (2) acts of animal cruelty.

If a warrant is issued, a copy of the warrant must be given to the person named in it along with notice that such person has a right to a hearing and an attorney.

The warrant must be executed and returned with reasonable promptness consistent with due process of law and be accompanied by a written inventory of all firearms and ammunition seized.

Hearing. Within 14 days after the execution of a warrant, the court for the geographical area where the person named in the warrant lives must hold a hearing to determine whether the firearm or firearms and any ammunition seized should be returned to the person named in the warrant or should continue to be held by the state. The state has the burden to prove all material facts by clear and convincing evidence.

After the hearing, the court may order that the seized weapons continue to be held by the state for up to one year, otherwise it must order that they be returned to the person named in the warrant.

Transfer of Firearms and Ammunition. Anyone, or his or her legal representative, whose firearm or firearms and ammunition are being held pursuant to the court order may transfer such weapons to anyone eligible to possess them. Within 10 days after written notice from the owner, or his or her legal representative, and the transferee,

the head of the state agency holding the seized weapons must deliver them to the transferee (CGS § 29-38c).

Related Bills

sSB 429, reported favorably by the Judiciary Committee, revises the civil restraining order application form to allow an applicant to indicate whether the respondent has a firearm eligibility or ammunition certificate. It allows such an applicant to request that a police officer, rather than a state marshal or other proper officer, serve process on the respondent.

sHB 5054 and sHB 5623, reported favorably by the Judiciary Committee, revise the civil restraining order application form to allow an applicant to indicate whether the respondent has a (1) firearm eligibility or ammunition certificate and (2) job in which the ability to carry a firearm is an essential requirement.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 32 Nay 8 (03/28/2016)